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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,798	01/23/2004	Joshua William Johnson	S1011/20171	7933

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EXAMINER

MCNEIL, JENNIFER C

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,798

Applicant(s)

JOHNSON, JOSHUA WILLIAM

Examiner

Jennifer C McNeil

Art Unit

1775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference numbers 24 and 25 are found in Figure 4, but are not reflected in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 5, 8, 10, 15, 19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 15, and 19 contain the phrase "in use". What is defined as "use"? Can the connection be defined simply as being movable with respect to the stalk member?

Claim 4 is dependent upon itself. For the purpose of examination, claim 4 is considered to depend from claim 1.

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Claim 5 is confusing. Does "hollow or solid" also refer to the "rubber tube"?

Claim 8 contains the term "dome-like". How is this term defined? Does "like" imply more than a dome shape? What is meant by "the intended underside"?

Claim 10 contains the phrase "intended distal end". What is meant by "intended"? What is it distal from?

Claim 19, line 5 refers to "said bell member". There is insufficient antecedent basis for this limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 11, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bowen (US 206,387). Bowen teaches an artificial tree and flowers comprising a stalk or trunk made to represent a plant shrub or tree. A head member of flowers, leaves, blossoms, blooms etc. is attached to the trunk as shown in Figure 1. The head member is attached by wires or springs (see Figure 1), which are considered flexible, and renders the head member movable with respect to the stalk. The base of the stalk is larger than the opposite end, and is considered outwardly flared.

Claims 1, 2, 5-9, and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kise (US 3,452,476). Kise teaches a connector and support for natural flowers. The support is a stem-like means formed of plastic. A connecting means (24) connects the calyx (12) of a natural flower to the artificial stem. The connection means is formed from a synthetic resin having at least limited pliable nature (flexible). The head member is considered the natural flower. Regarding claim 5, the connection means

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comprises a hollow plastic tube. Regarding claim 6, the connection means is on a proximal end of the stem. Regarding claim 8, flower heads are curved and has a connection part (26), which is a screw.

Regarding claim 7, the screw member is considered to be part of the connection means.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 10, 12, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowen (US 206,387). Bowen teaches an artificial tree or flower as discussed above. Bowen teaches that the connection means may be a wire but does not specify the material used. It would have been obvious to one of ordinary skill in the art at the time of the invention to use wire made of a corrosion resistant metal to prevent the article from degradation by exposure to the elements.

Regarding claim 10, as shown in the Figure, the distal end of the stalk has a protrusion to fit into a socket in the platform. It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the socket in the stalk and the protrusion on the platform, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art (*In re Einstein*, 8 USPQ 167).

Regarding claim 12, Bowen teaches a spiked end. It would have been obvious to use a socket and spike configuration, since it has been held that constructing a formerly integral structure in various elements involves only routing skill in the art (*Nerwin v. Erlichman*, 168 USPQ 177, 179).

Regarding claims 13 and 14, it would have been obvious to one having ordinary skill in the art at the time of the invention to use a ceramic material as the artificial flower, since it has been held to be

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within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice (*In re Leshin*, 125 USPQ 416). It would have been obvious to use a weather resistant material to prevent degradation upon exposure.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martin '022, Young et al '892, Backus '586, Pitman '471, Johnson '565, Baus et al '102, and Puleo '459.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer C McNeil whose telephone number is 571-272-1540. The examiner can normally be reached on 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer McNeil
November 29, 2004